

REMARKS

Claims 1, 2, 4-6, 8-10, 12-14, 16-18, 20, 22, 23, 25-30 and 33 are pending in this application.

Requirement for Restriction under 37 C.F.R. §1.141

In Paper No. 06212005, the Examiner required Applicant pursuant to 35 U.S.C. §121 and 37 C.F.R. §1.141, to elect between:

- Group I: defined by claims 1-2, 4-6, 12-14, 20, 22-23, 25-26, 28, 30 and 33; and
- Group II: defined by claims 8-10, 16-18, 27 and 29.

The Applicant provisionally elects Group I defined by claims 1-2, 4-6, 12-14, 20, 22-23, 25-26, 28, 30 and 33.

MPEP 808.02 mandates that the Examiner show, by appropriate explanation, one of the following, (A) separate classification of the species, (B) separate status in the art when they are classifiable together, or (C) a different field of search. This is important as a restriction requirement is to be imposed when an undue burden is placed on the Examiner if the patent application is not restricted. It is noted in the restriction of June 27, 2005 (Paper No. 06212005), the Examiner failed to show any of (A)-(C). Therefore, the restriction requirement must be withdrawn.

In addition, it is noted that the restriction requirement of June 27, 2005, there is no showing of an undue burden on the part of the Examiner if the Examiner was to examine all claims in one single examination. This omission on the part of the Examiner is important as the Examiner wants to restrict Applicant's invention into narrow patent applications without any showing of justification. Simply mentioning that one is a combination and the other is a subcombination is not enough to uphold the Examiner's burden of proof. Because the restriction requirement of June 27, 2005 lacks justification on the part of the Examiner to restrict Applicant's patent application into two parts, the restriction requirement must be withdrawn as the restriction requirement is respectfully, incomplete. Therefore, the Examiner has failed to provide the Examiner proper protection of rights and sustaining the Patent Office's burden of proof. Such a showing must be made so the Applicant has a fair opportunity to respond before any action on the merits is given.

As specifically stated in MPEP § 803, the examiner must show that the (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP §806.05 - §806.05(i)); **and** (B) There must be a **serious burden** on the examiner if restriction is required (see MPEP §803.02, § 806.04(a) -§806.04(i),§808.01(a), and § 808.02).

Clearly as shown below and above, the criteria of MPEP § 803 are not met for a proper restriction requirement.

For example, looking at groups I and II, the claims of group II include certain features of

group I and group I has certain features of group II, thereby mandating a search of both classes of the two groups, although the Examiner failed to provide the different classifications. Clearly there is no serious burden on the Examiner.

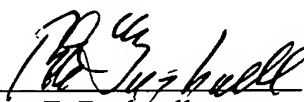
Moreover, the Applicant traverses the requirement and requests re-consideration and withdrawal of the requirement, because all patents and patent applications directed to the subject matter of either Group I or Group II, by statute, must necessarily disclose out to make and use the subject matter disclosed by those patents and patent applications. Consequently, the mandatory field of search for both Groups I and II are co-extensive and inherently overlapping in their disclosed details. A search confined solely to one class, without considering the classes directed to other statutory matter, is intrinsically incomplete. Consequently, the Examiner must search the designated subclasses of both classes of the field of search of both groups. This is assuming that there is even two different fields of search for which the Examiner has failed to provide.

Therefore, respectfully, as shown above and according to MPEP §803, it is clear that the restriction of the present application is improper and creates no serious burden on the Examiner. Withdrawal of the requirement is therefore requested.

In view of the foregoing election, this response is believed to be a complete response to the Restriction Requirement. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

A fee of \$120.00 is incurred by filing a petition for one (1) month extension of time. Applicant's check drawn to the order of the Commissioner accompanies this Response. Should there be a deficiency in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,


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